

CONSUMER NOTES



The enactment of the Employees State Insurance Act (ESI Act) was the outcome of the welfare policy of the State to provide for certain benefits to employees in cases of sickness, maternity and employment-injury. The object of the ESI Act, therefore, is to secure benefits like sickness benefit, maternity benefit, disablement benefit and medical benefits to the employees who are covered under the Act (employees having a monthly salary up to Rs 6,500).

Can a dispute regarding the right of an employee to the benefits under ESI Act (such as reimbursement of medical expenses) be adjudicated by the consumer disputes redressal forum under the Consumer Protection Act?

No, says the National Consumer Disputes Redressal Commission, relying on two earlier decisions - one, that of the Supreme Court and the other, that of the National Commission itself. (III (1998) CPJ 11 NC)

The Supreme Court in 'Chairman, Thiruvalluvar Transport Corporation v. The Consumer Protection Council' had an occasion to consider the provisions of the Motor Vehicles Act

vis-a-vis the provisions of the Consumer Protection Act. In that case, one K Kumar had died of head injuries sustained by him while travelling in a bus which met with an accident. One Consumer Protection Council filed a complaint on behalf of the legal representatives of Kumar before the National Commission for the award of compensation. The Commission allowed the complaint awarding a compensation of Rs 5.10 lakh.

The transport corporation went in appeal before the Supreme Court, which allowed the appeal and set aside the order of the National Commission holding that the consumer fora had no jurisdiction to entertain a claim application and to award compensation in respect of an accident involving the death of a person caused by the use of a motor vehicle.

The Motor Accident Claims Tribunal constituted for the area in question, alone has jurisdiction to entertain any claim for compensation arising out of fatal accidents, since such a claim application would clearly fall within the ambit of section 165 of the Motor Vehicles Act of 1988, which is a special act in relation to claims of compensation arising out of the use of motor vehicles.

The Consumer Protection Act being a law dealing with the question of extending protection to consumers in general, is a general law in relation to the

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specific provisions in Chapter XII of the MV Act concerning accidents arising out of the use of motor vehicles.

Ordinarily the general law must yield to the special law.

In the other decision, Union of India v. M Adaikalam, the National Commission had considered the jurisdiction of the consumer fora to consider compensation claims arising out of railway accidents, in the light of the provisions of the Railway Claims Tribunal Act.

It held that the consumer fora had no jurisdiction to entertain complaints relating to deficiency in service arising from loss, destruction, damage, deterioration or non-delivery of goods etc. entrusted to the railway administration for carriage. This jurisdiction is exclusively vested in the Railway Claims Tribunal.

Relying on these two decisions, the National Commission held that a claim for reimbursement of medical expenses by employees covered by ESI Act Court, could not be entertained by the consumer fora, as their jurisdiction is barred under section 75(3) of ESI Act, which is a complete code by itself.

Section 74 of ESI Act provides that "the State Government shall, by notification in the official Gazette, constitute an Employees State Insurance Court" for a specified local area. Section 75(1) provides that any question or dispute regard-

ing the right of any person to any benefit and as to the quantum and duration of such benefit, should be decided by the ESI Court in accordance with the provisions of the ESI Act.

Section 75(2) provides that any claim for the recovery of any benefit admissible under the ESI Act should be decided by the ESI Court. Section 75(3) lays down that "no civil court shall have jurisdiction" to decide or deal with any question or dispute as aforesaid or adjudicate on any liability which, by or under the ESI Act, is to be decided by a medical board or by a medical appeal tribunal or by the ESI Court.

Therefore, the right to claim

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reimbursement is conferred by the ESI Act which also provides efficacious remedy for the enforcement of such rights. As such, the ESI Act is a special act in relation to claims regarding reimbursement from the corporation, whereas the Consumer Protection Act dealing with the question of extending protection to consumers in general, is a general law in relation to specific provisions concerning the benefits conferred under the provisions of the ESI Act and the remedy provided thereto enforces those benefits. Ordinarily, the general law must yield to the special law.

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